

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**LEROY WELLS,**

Petitioner,

v.

**MARK NOOTH,**

Respondent.

---

**Civ. No. 2:15-cv-01639-TC**

OPINION and ORDER

MCSHANE, Judge:

Magistrate Judge Thomas M. Coffin filed a Findings and Recommendation (ECF No. 90) and the matter is now before this court. *See* 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72.

After having reviewed the legal principles and the Petitioner's Objections (ECF No. 96), I find no error, conclude Judge Coffin's Findings and Recommendation is correct, and adopt it in its entirety. *United States v. Bernhardt*, 840 F.2d 1441, 1445 (9th Cir. 1998). Therefore, Mr.

Wells' petition under 28 U.S. C. § 2254 challenging his convictions and sentences is DENIED without prejudice for the reasons stated below.

1 – OPINION AND ORDER

## DISCUSSION

The Petitioner (Mr. Leroy Wells), filed this Petition for Writ of Habeas Corpus under 28 U.S. C. § 2254 challenging his state convictions and sentences for Sexual Abuse in the First Degree, Menacing, Burglary in the First Degree, Strangulation, and Coercion. (ECF No. 1). The Respondent moved to deny his petition without prejudice because petitioner is presently appealing his convictions at the state level, and therefore has not exhausted all of his available state remedies. (ECF No. 55).

As Judge Coffin found and I agree, Mr. Wells' petition under 28 U.S. C. § 2254 challenging his convictions and sentences must be denied without prejudice because he has yet to exhaust all his available state remedies. (ECF No. 90 at pp.1-2). As Judge Coffin correctly stated, under 28 U.S.C. § 2254 (b) (1), an application for a writ of habeas corpus "shall not be granted" unless "the applicant has exhausted the remedies available in the courts of the State." Exhaustion occurs when a petitioner has given the state courts a "full and fair" opportunity to consider and resolve all federal claims. *Keeney v. Tomayo-Reyes*, 504 U.S. 1, 10 (1992). If a petitioner can present a claim to the state's Supreme Court, he must do so to properly exhaust that claim. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844-45 (1999).

## CONCLUSION

For these reasons, it is hereby ordered that Magistrate Judge Coffin's Findings and Recommendation (ECF No. 90) is ADOPTED IN ITS ENTIRETY. Petitioner's Writ of Habeas Corpus petition under 28 U.S. C. § 2254 (ECF No. 1) is DENIED without prejudice. The Petitioner's request for the issuance of a certificate of appealability is also DENIED.

The Clerk of the Court is directed to enter a judgment dismissing this proceeding, and all of the Petitioner's other motions are DENIED as moot.

IT IS SO ORDERED.

DATED this 14th day of July, 2016.

A handwritten signature in black ink, appearing to read 'Michael J. McShane', is positioned above a horizontal line.

**Michael J. McShane**  
**United States District Judge**